

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESale PRICE  
LITIGATION  
\_\_\_\_\_

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)  
) MDL No. 1456  
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) Civil Action No. 01-12257-PBS  
)

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THIS DOCUMENT RELATES TO:  
ALL ACTIONS  
\_\_\_\_\_

) Judge Patti B. Saris  
)  
)  
)

**DECLARATION OF DIRECT TESTIMONY BY ALFRED L. GRAF**

I, ALFRED L. GRAF, hereby declare:

1. My name is Alfred Lee Graf. I have personal knowledge of the facts stated in this Affidavit, and they are true and correct. I am competent to testify relating to the matters contained herein.

2. I have a bachelor's degree in business administration from Kansas Newman College. I have a Master of Science in Administration from Wichita State University that I received in 1973.

**Employment Background at Schering and Warrick:**

3. Schering-Plough bought the previous pharmaceutical company for which I worked in 1986. I was a Regional Manager at the time, and continued as a Regional Director for Schering-Plough, responsible for managing District Managers and Sales Representatives who marketed branded pharmaceuticals.

4. I continued working for Schering until 1995 when I was transferred to Warrick. I became a National Director, Sales, for Warrick, responsible for sales of Warrick's products to approximately one third of Warrick's accounts. This was my first experience with sales of

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generic pharmaceuticals. My customers are primarily chain pharmacies and wholesalers. I continue to work for Warrick as National Director, Sales.

### **Warrick Sales and Marketing**

5. Warrick was able to obtain and maintain market share for its generic albuterol products for several reasons. First, Warrick was and is a subsidiary of Schering, and its products were manufactured on the same production lines as the Schering branded albuterol products (Proventil). Customers liked and trusted the Schering name.

6. Second, Warrick established a reputation as a having a reliable supply and exceptional service.

7. Third, Warrick has been able to quickly meet competitors' prices in the marketplace. Once Warrick has established itself with a particular customer, Warrick is usually able to keep that customer by matching price offers from competitors on a customer-by-customer basis. As a result, Warrick's prices to customers in a particular class of trade are not uniform.

8. Warrick's products, including albuterol, are almost exclusively "self-administered" drugs. As a consequence, Warrick focuses its marketing on wholesalers, large chain pharmacies, and generic distributors. Warrick has never marketed its products to physicians. Warrick has also never sold its products directly to physicians.

9. I understand that the term "AWP" originated as an acronym for "average wholesale price." I became familiar with AWP during my years working in the branded part of the industry. I understand that AWP is used in some third-party reimbursement methodologies, although I have no knowledge of how it is used in that regard.

10. AWP is not something I have had to deal with in selling Warrick's generic products to my customers. I do not recall having had any discussions about AWP with Warrick's customers.

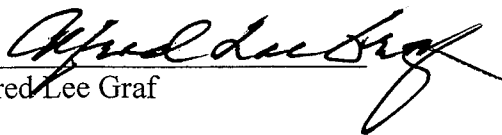
11. Warrick's sales presentations have never included any discussion of third-party reimbursements or AWP. To my knowledge, Warrick has never sold its products by using any discussion of AWP's or reimbursement "spreads." In fact, the first time that I heard the phrase "marketing the spread" was in connection with the discovery in the AWP cases. Warrick simply did not "market the spread" as I understand that phrase is used in the AWP litigation.

12. Because Warrick has never "marketed the spread," I was not even aware of the AWP of Warrick's drugs as compared to the competition. I learned late last year, that Warrick's AWP's were never the highest in the marketplace and were often low compared to the competition.

13. Though I am generally familiar with First DataBank and other such reference services, I do not recall ever discussing with anyone within Warrick what such services do, how the information they publish is used, or what information is provided to them. I have never discussed such services with any of my customers.

14. I have no information regarding the prices at which my customers resell our products, and I do not discuss this issue with my customers. I do not discuss reimbursements with my customers. I have never discussed with my customers how they calculate their profit or how they make a profit, and have never concerned myself with this issue. The only price I ever discussed with my customers in promoting Warrick's products was their actual cost to acquire the products.

I declare under penalty of perjury that the foregoing is true.

  
Alfred Lee Graf

EXECUTED this 14<sup>th</sup> day of November, 2006.